

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 7
AMEND ARTICLE 1, REPEAL ARTICLES 2 THROUGH 10 AND ARTICLE 15

CARGO SECUREMENT STANDARDS (CHP-R-2006-07)

The California Highway Patrol (CHP) proposes to amend the Motor Carrier safety Regulations contained in Title 13, California Code of Regulations (13CCR) to be consistent with the current version of adopted federal regulations in Title 49, Code of Federal Regulations (CFR).

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

California Vehicle Code (VC) Section 2402 authorizes the Commissioner of the CHP to make and enforce regulations as necessary to carry out the duties of the CHP. AB 3011 as introduced by Assembly Member Benoit adds Section 34500.3 to the VC. As adopted, Section 34500.3 VC states that the CHP shall adopt rules and regulations that are designed to promote the safe operation of vehicles, regarding cargo securement standards. The regulations adopted pursuant to this section shall be consistent with the securement regulations adopted by the United States Department of Transportation (USDOT) in Part 393 (commencing with Section 393.1) of Title 49 CFR as those regulations now exist or are amended in the future. Currently, California's loading regulations are contained in 13 CCR, Sections 1300 through 1425.

Adopting the federal cargo securement standards is required by newly chaptered statute, contained in Section 34500.3 VC, effective January 1, 2007. This rulemaking will enhance the competitiveness of California by eliminating state-only regulations which represent a negative impact on businesses and the economy and conflict with current federal regulations. These changes will also enhance public safety and unify regulations for all motor carriers of property.

AB 3011 repealed all statutory authorities to adopt cargo securement regulations, thereby rendering current regulations unenforceable. However, in order to ensure the continued safety of the motoring public, the California Highway Patrol is currently enforcing the federal cargo securement standards as a result of the approval of an emergency rulemaking, as of January 1, 2007. The specific commodities affected by AB 3011 are Baled Hay and Straw, Baled Cotton, Paper and Jute, Logs and Poles, Bunk Stake Assemblies, Junk and Scrap Metal, Steel Coils, Steel Plate, Sheet, and Tinplate, Empty Wooden Boxes, Detachable Freight Vans or Tank Containers, and Lumber and Lumber Products.

Failure to adopt these regulations could result in federal preemption of California's Motor Carrier Safety Regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with Federal Motor Carrier Safety Regulations would also jeopardize Federal Motor Carrier Safety Assistance program grants used for commercial vehicle enforcement and training, and subsequently jeopardize federal highway

funding to California. The loss of all or a portion of this funding would in itself represent a substantial negative impact on public safety.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

CHP, Enforcement Services Division
Commercial Vehicle Section
ATTN: Officer Jason Golenor
P. O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 PM, April 16, 2007, or at the scheduled hearing.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling the CHP, Commercial Vehicle Section, at (916) 445-1865. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the requestors information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 444 North Third Street, Suite 310, Sacramento, California. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our website at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on our website.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or questions regarding the substance of the proposed regulations should be directed to Sergeant Jim Epperson or Officer Jason Golenor, CHP, Commercial Vehicle Section, at (916) 445-1865.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or non-substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL AND ECONOMIC IMPACT

The California Highway Patrol has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no increased nondiscretionary or reimbursable costs or savings to any local agency, school district, state agency, or federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; (5) will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as the majority of other states (especially neighboring) have already adopted these or similar requirements; and (6) may result in an indeterminate cost to a narrow segment of the regulated community. Any costs that are incurred are believed to be of an insignificant amount. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The California Highway Patrol is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

The California Highway Patrol has determined that the proposed regulatory action may affect small businesses.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the CHP, or that has otherwise been identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402, and 34500.3 VC.

REFERENCE

This action implements, interprets, or makes specific Sections 29200, 29800, 30800, 31510, 31520, 31530, 31540, 34506, 34506.3 VC.

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
S. J. VAUGHN, Chief
Enforcement Services Division